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FISCAL IMPACT REPORT



SPONSOR: Marquardt DATE TYPED: 2-2-02 HB 167

SHORT TITLE: Frivolous Complaint Against School Personnel SB _____

ANALYST: Baca

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY02 | FY03 | FY02 | FY03 | | |
| | NFI | | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

State Department of Education (SDE)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 167 amends the School Personnel Act (22-10-1, NMSA, 1978) and provides that costs and attorney fees may be assessed against a person who files a frivolous complaint or a complaint in bad faith against school personnel in hearings on termination decisions, discharge hearings, hearings supervising or correcting unsatisfactory work performance, and hearings on the suspension or revocation of certificates.

Significant Issues

According to the SDE analysis, this bill would have the effect of creating a “significant adversarial relationship between management and staff in a public school setting. The analysis raises several concerns:

1. Who is the intended “target” of the bill?
2. Will the bill have a chilling effect on efforts to hold school employees accountable for their behavior and performance?

3. Is the bill intended to be punitive?
4. Is this bill consistent with how claims against the “sovereign” are currently required to be made under the state Tort Claims Act [§§41-4-1 – 41-4-27, NMSA 1978]?
5. Can HB 167 be looked at as an administrative libel/slander/defamation/abuse of process law that allows someone to recover damages *without going through the long-established civil process*?

The SDE analyst concludes that the bill “Creates a litigious environment where the need to rid schools of insubordinate and under-performing employees must be weighed against the desire to compensate employees who are perceived to have been harmed.”

ADMINISTRATIVE IMPLICATIONS

Enactment of this will require that SDE draft, and the State Board approve a major change in its rule governing suspension and revocation of licensure. Local school districts would also have to adopt written policies consistent with the change in law.

TECHNICAL ISSUES

According to the SDE, this bill partly conflicts with Section 22-10-3.4 NMSA 1978 of the School Personnel Act that provides that a “person being accused shall have the right to sue for any damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to an unauthorized person.”

In addition, according to the SDE, Section B (3) of the bill poses problems in that it refers to an existing “hearing supervising or correcting unsatisfactory work performance...under Section 22-10-21 NMSA 1978.” There is no such “hearing” under that quoted section of the law. Moreover, the State Board’s procedures set forth in 6.69.2 NMAC (“Unsatisfactory Work Performance of Certified (Licensed) School Personnel”) does not currently require, authorize or permit a hearing.

LB/njw